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PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional)
PSTM0009/MRK

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on March 8, 2006Signature Marilyn R. KhorsandiTyped or printed
name Marilyn R. KhorsandiApplication Number
09/684869Filed
10/6/2000First Named Inventor
David Allison Bennett, et al.Art Unit
3629Examiner
Webb, Jamisue A.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

- ☒ attorney or agent of record.
Registration number 45744


- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34. _____

Marilyn R. Khorsandi
SignatureMarilyn R. Khorsandi
Typed or printed name(626) 796-2856
Telephone numberMarch 8, 2006
DateNOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.☐ *Total of _____ forms are submitted.

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Marilyn R. Khorsandi
Marilyn R. Khorsandi

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David Allison Bennett, et al.
Application No. : 09/684,869
Filed : October 6, 2000
Title : Reporting Shipping Rates and Delivery Schedules For
Multiple Services and Multiple Carriers
Grp./Div. : 3629
Examiner : Webb, Jamisue A
Docket No. : PSTM0009/MRK

PRE-APPEAL BRIEF REQUEST FOR REVIEW REASONS

Mail Stop AF	140 S. Lake Ave., Suite 312
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Commissioner:

On the face of the Office Action dated December 9, 2005 in the above-identified application, the Examiner indicated that "[t]his action is non-final." However, in the text of the Office Action, the Examiner indicated that "THIS ACTION IS MADE FINAL." The Office Action is treated as a Final Office Action.

In the Office Action, Claims 64-79 (sometimes referred to herein as the "Claims" or as the "rejected Claims") were rejected under 35 U.S.C. §103(a) as being unpatentable over Kara et al. (U.S. Patent No. 6,233,568; "Kara") in view of Barnett et al., (U.S. Patent No. 6,369,840; "Barnett").

After carefully considering the rejections, a pre-appeal brief panel review of the rejection of the Claims is respectfully requested on the grounds described in more detail below with reference to the Claims as amended in the Amendment and Response filed in response to the Office Action dated January 13, 2005. This Request is filed pursuant to the guidelines for requesting a pre-appeal brief conference as presented in the Official Gazette (the "OG"), dated July 12, 2005. This Request is timely filed within the three-month period set by the Examiner because it is filed before the expiration of March 9, 2006. Reconsideration and allowance of the application in view of this Request is respectfully requested.

A. No MPEP §706.02(j) PRIMA FACIE MOTIVATION TO COMBINE *BARNETT*

It is respectfully asserted that there is no teaching or suggestion, and the rejections did not identify any teaching or suggestion, found in the prior art, as required under MPEP §706.02(j), to combine *Barnett* with the other cited reference. See also MPEP §2143.

In the Final Office Action, the Claims were rejected in view of *Barnett* on the grounds that “[i]t would have been obvious to ... modify Nicholls and Kara to display the calculation of shipping rates, calculated by Nicholls and Kara in the format of a simultaneous display, as disclosed by Barnett, in order to provide a multi-layers system wherein different categories can be overlaid on one another providing a single integrated display that allows a user to order or purchase a system based on the calendar day and time ...” (citing Barnett, col. 2). Final Office Action, Topic No. 5. Notably, although “Nicholls” was referenced in the above-cited text, the Claims were not rejected on a basis involving any reference identified as “Nicholls.”

It is respectfully submitted that “... provid[ing] a multi-layered calendaring system wherein *events belonging to different categories* and selected by a user can be overlaid on one another in a single integrated calendar ...” (as disclosed in *Barnett*, col. 2, lines 26 – 29 (emphasis added)), does not provide any teaching or suggestion as required by MPEP §§706.02(j) to combine *Barnett* with the other cited reference with respect to the subject matter of e.g., Claim 64 of the present application that is directed to “... simultaneously displaying said first, second, third, and fourth shipping rates to said user ...” for a *single event*, i.e., “...deliver[ing] said package to said destination ...”. Therefore, it is respectfully asserted that *Barnett* is not properly combined with the other cited references and that, therefore, the Claims of the present application should be allowed.

B. No SHOWING UNDER MPEP §2143 FOR EACH LIMITATION OF EACH CLAIM

Even assuming for the sake of argument that the prior art suggests or otherwise provides a motivation for combining the *Barnett* reference with the other cited reference as required by MPEP §706.02(j), it is respectfully asserted that the rejections did not indicate, as required under MPEP §2143, how the cited references, even when

combined, disclose, anticipate, teach or suggest each of the limitations of each of the rejected Claims.

For example, Claim 64 of the present application provides limitations for which the rejection failed to indicate, as required under MPEP §2143, any disclosure, anticipation, teaching or suggesting by the cited references, even when combined. For example, Claim 64 provides, among other things, a limitation for: "... simultaneously displaying said first, second, third, and fourth shipping rates to said user..." where said first and second shipping rates were determined for "... deliver[ing] [a] package to [a] destination according to a ..." first and second delivery service, respectively, offered by a first carrier and where said third and fourth shipping rates were determined for "... deliver[ing] [a] package to [a] destination according to a ..." third and fourth delivery service, respectively, offered by a second carrier.

Although the rejection of the Claims mentioned that "Barnet[t] discloses the use of a calendar which can be used for online purchasing of services ... where there is simultaneous display of services offered with respect to providers and time and date ..." (Final Office Action, Topic No. 5), it is respectfully submitted that the rejection failed to show that combining Barnett with the other cited references discloses, anticipates, teaches or suggests the above-cited limitation of independent Claim 64.

Rather, as compared to the above-quoted limitation of Claim 64, Kara does not disclose, anticipate, teach or suggest "... *simultaneously displaying* ..." rates for multiple delivery services offered by multiple carriers. Rather, Kara discloses a user pre-selection of a particular delivery service and a subsequent display of carrier-specific rates for the pre-selected delivery service adjacent to an identifier of the respective carrier. See, e.g., Kara, Figure 8A; Kara, col. 5, lines 56 – col. 6, line 6; Kara, col. 22, lines 21-48 (disclosing a "... program [that] automatically calculates the [shipping] fees for each shipping service provider offering service *commensurate with the desired shipping and/or delivery parameters* ..." Kara, col. 22, lines 39 – 42 (emphasis added)). Therefore, according to Kara, a user of Kara must first indicate the desired shipping and/or delivery parameters (e.g., Overnight, or Same Day, or Next Day, or 2-Day, or 3-Day) so that the Kara "program [will] automatically calculate[] the [shipping] fees for

each shipping service provider offering service *commensurate with the desired shipping and/or delivery parameters.*" Kara, col. 22, lines 39 – 42 (emphasis added). That is, only once a user has indicated a desired type of service, will the Kara program calculate the shipping rate for each carrier that supports *the desired service* and then display the results.

Importantly, as compared to the above-cited limitation of Claim 64, as can be seen in FIG. 8 of Kara, Kara would display only one rate per carrier at a time. That is, in order to obtain rates for more than one delivery service offered by a carrier using Kara, it is respectfully submitted that a user would need to successively indicate an "urgency", e.g., "Overnight" on FIG. 8 of Kara, so that the Kara system would, according to the specification of Kara (e.g., Kara, col. 22, lines 39 – 42), calculate the rates for the shipping service providers (depicted in FIG. 8 of Kara as "US Post", "Federal Express", "DHL", "UPS", "Purolator", and "Emery") for each successively indicated "urgency".

Further, because, for the reasons described above, Kara, whether considered alone or in combination, does not disclose, anticipate, teach or suggest the above-cited limitations of Claim 64, it is therefore respectfully submitted that combining Kara with a calendaring system such as Barnett does not disclose, anticipate, teach or suggest the above-cited limitations of Claim 64.

For reasons similar to those given above with respect to Claim 64, it is respectfully asserted that none of the cited references, whether considered alone or in combination, disclose, anticipate, teach or suggest all of the limitations of independent Claim 74. Specifically, it is respectfully asserted that "... provid[ing] a multi-layered calendaring system wherein *events belonging to different categories* and selected by a user can be overlaid on one another in a single integrated calendar ..." (as disclosed in Barnett, col. 2, lines 26 – 29 (emphasis added)), does not provide any disclosure, teaching or suggestion of simultaneously displaying to a user a first, second, third and fourth delivery schedule indicia for a *single event* ("...deliver[ing] said package to said destination...") as recited as follows by independent Claim 74 for simultaneously displaying to a user: "(A) a first delivery schedule indicia indicating that said first carrier would deliver said package to said destination on said first day if said first carrier were

to deliver said package to said destination via said first delivery service; (B) a second delivery schedule indicia indicating that said first carrier would deliver said package to said destination on said second day ...; (C) a third delivery schedule indicia indicating that said second carrier would deliver said package to said destination on said third day ...; and (D) a fourth delivery schedule indicia indicating that said second carrier would deliver said package to said destination on said fourth day ...".

Still further, because for reasons given above, none of the cited references, whether considered alone or in combination, disclose, anticipate, teach or suggest all of the limitations of the independent Claims 64 and 74, it is therefore respectfully asserted that none of the cited references, whether considered alone or in combination, disclose, anticipate, teach or suggest all of the limitations of the Claims that are dependent on Claims 64 and 74.

C. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the invention disclosed and claimed in the present application is not fairly taught by any of the references of record, taken either alone or in combination, and that the application is in condition for allowance. Accordingly, reconsideration and allowance of the application is respectfully requested.

Respectfully submitted,

KHORSANDI PATENT LAW GROUP, ALC

By Marilyn R. Khorsandi

Marilyn R. Khorsandi
Reg. No. 45,744
626/796-2856